



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name**

MED TRANS CORPORATION  
AIRMED

#### **Respondent Name**

TEXAS MUTUAL INSURANCE CO

#### **MFDR Tracking Number**

M4-15-0167-01

#### **Carrier's Austin Representative**

Box Number 54

#### **MFDR Date Received**

September 12, 2014

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary:** "This is a **request for a medical fee dispute** for assistance on the above referenced claim. **This claim has been processed incorrectly.** We have made multiple attempts to settle this claim with the insurance carrier, but have had no success.

According to the United States Code Title 49, 41713, **the Airline Deregulation Act (ADA) of 1978 states that individual states cannot regulate the prices, routes or services of the air ambulance industry**, therefore, it is inappropriate that air ambulance services be subject to state workers' compensation allowance and should be reimbursed at 100% of billed charges.

Per the memorandum published by the Texas Department of Insurance, Division of Workers' Compensation, dated March 28, 2013. This memorandum provides a reminder to Texas Workers' Compensation System Participants that, in short, based on the arguments and facts presented by parties at medical fee dispute resolution, the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) has issued a number of medical fee dispute decisions holding that the Airline Deregulation Act of 1978, as amended applies to air ambulance services provided by an interstate air carrier to claims subject to the Texas Workers' Compensation Act (these cases are pending appeal). Thus, the TDI-DWC has found it is preempted from enforcing "a law, regulation or other provision, related to a price of an [air ambulance]."

**Amount in Dispute:** \$25,019.85

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary:** "The Division's medical fee guidelines are not preempted by the Federal Aviation Act. A different federal statute, the McCarran Ferguson Act, ensures that aviation legislation does not preempt the State of Texas's insurance regulations. Thus, the medical fee guidelines apply and require a "fair and reasonable" reimbursement ...

The Division has recently issued a Memorandum advising that "The TDI-DWC has found it is preempted from enforcing" any regulation relating to the prices charged by air ambulance providers. But Med-Trans Corp's argument and the Division Memorandum do not address the McCarran-Ferguson Act, which expressly reverses any possible preemption under the 1978 Act. Thus, the medical fee guidelines do apply, and insurers are entitled to reimburse air ambulance providers according to those guidelines."

**Response Submitted by:** Texas Mutual Insurance Company

## SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 25, 2013	Air Ambulance Services	\$25,019.85	\$0.00

## FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - CAC-W1 – Workers Compensation State Fee Schedule Adjustment
  - CAC-W3 – In accordance with TDI-DWC Rule 134.804, this bill has been identified as a reconsideration or appeal
  - 350 – In accordance with TDI-DWC Rule 134.804, this bill has been identified as a request for reconsideration or appeal
  - 420 – Supplemental payment
  - 635 – Reimbursement is based on fair and reasonable as sited in section 134.1
  - CAC-P12 – Workers' Compensation Jurisdictional Fee Schedule Adjustment
  - CAC-138 – Appeal procedure not followed or time limits not met
  - CAC-193 – Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly
  - 879 – Rule 133.250(B) Health care provider shall submit the request for reconsideration no later than 10 months from the date of service
  - 891 – No additional payment after reconsideration
  - CAC-P12 – Workers Compensation jurisdictional fee schedule adjustment
  - CAC-18 – Exact duplicate claim/service
  - 878 – Appeal (Request for reconsideration) previously processed. Refer to Rule 133.250(H)

### Issues

1. Does the federal McCarran-Ferguson exempt the applicable Texas Workers' Compensation medical fee guideline from preemption by the federal Airline Deregulation Act?
2. Is denial code 879 supported?
3. Did the requestor waive the right to medical fee dispute resolution?

### Findings

1. The requestor maintains that the Federal Aviation Act, as amended by the Airline Deregulation Act (ADA) of 1978, 49 U.S.C. §41713, preempts the authority of the Texas Labor Code to apply the Division's medical fee schedule amount. This threshold legal issue was considered by the State Office of Administrative Hearings (SOAH) in *PHI Air Medical v. Texas Mutual Insurance Company*, Docket number 454-12-7770.M4, *et al.* SOAH held that "the Airline Deregulation Act does not preempt state worker's compensation rules and guidelines that establish the reimbursement allowed for the air ambulance services . . . rendered to injured workers (claimants)." SOAH found that:

In particular, the McCarran-Ferguson Act explicitly reserves the regulation of insurance to the states and provides that any federal law that infringes upon that regulation is preempted by the state insurance laws, unless the federal law specifically relates to the business of insurance. In this case, there is little doubt that the worker's compensation system adopted in Texas is directly related to the business of insurance . . .

The Division agrees. The Division concludes that its jurisdiction to consider the medical fee issues in this dispute is not preempted by the Federal Aviation Act, or the Airline Deregulation Act of 1978, based upon SOAH's threshold issue discussion and the information provided by the parties in this medical fee dispute. The disputed services will therefore be decided pursuant to Texas Labor Code §413.031 and all applicable rules and fee guidelines of the Texas Department of Insurance, Division of Workers' Compensation.

- Insurance carrier denied the disputed service with denial reason "879 – Rule 133.250(B) – Health care provider shall submit the request for reconsideration no later than 10 months from the date of service."

Administrative Code §133.250(b) states: "The health care provider shall submit the request for reconsideration no later than 10 months from the date of service."

Review of documentation provided by the requestor does not support a request for reconsideration submitted in accordance with 28 Texas Administrative Code §133.250.

- To be eligible for medical fee dispute resolution, a request must be timely filed in accordance with 28 Texas Administrative Code §133.307(c)(1), which states:

Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute."

The date of the services in dispute is August 25, 2013. The request for medical dispute resolution was received in the Medical Dispute Resolution (MDR) section on September 12, 2014. This date is later than one year after the date(s) of service in dispute. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307(c)(1)(B). The Division concludes that the requestor has failed to timely file this dispute with the Division's MDR Section; consequently, the requestor has waived the right to medical fee dispute resolution.

### **Conclusion**

The Division finds that the requestor has waived the right to medical fee dispute resolution for the services in dispute. For that reason, the merits of the issues raised by the parties to this dispute have not been addressed.

### **ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

### **Authorized Signatures**

_____ Signature	_____ Medical Fee Dispute Resolution Officer	2/27/15 _____ Date
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### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee***

***Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**